



# Memorandum

**TO:** PUBLIC SAFETY, FINANCE &  
STRATEGIC SUPPORT  
COMMITTEE

**FROM:** Debra Figone

**SUBJECT:** SEE BELOW

**DATE:** October 8, 2009

**SUBJECT: ONE YEAR REPORT ON THE POLICE DEPARTMENT'S REVISED  
CITIZEN COMPLAINT PROCESS AND IN-CUSTODY DEATH  
TRAINING REVIEW PANEL**

## **RECOMMENDATION**

Accept the evaluation of the Police Department's (a) Revised Citizen Complaint Process and (b) In-Custody Death Training Review Panel.

## **OUTCOME**

This report provides a one-year evaluation of the revised Citizen Complaint Process (Process) and In-Custody Death Review Panel, as directed by the City Council on January 29, 2008. The report also identifies areas that require additional discussion and/or refinement.

## **BACKGROUND**

In 2007, the City Council issued various referrals to the Administration related to changes in the Process, as well as direction to explore the creation of an In-Custody Death Training Review Panel. At the January 29, 2008 City Council meeting, the Administration presented the key elements of the revised Process and the City Council directed the Administration to return one year after the Process had been implemented. The complete 2008 report is available at: [www.sanjoseca.gov/clerk/Agenda/012908/012908\\_08.02.pdf](http://www.sanjoseca.gov/clerk/Agenda/012908/012908_08.02.pdf). The Process was implemented on July 1, 2008. This report covers an evaluation of the Process for the period July 1, 2008—June 30, 2009.

### ***Revised Citizen Complaint Process Goals & Objectives***

Before development of the revised Process began, the Administration established the following goals and objectives based on the City Council's direction:

- Transparency and clear understanding of the process for an individual filing a case and the workforce
- Standardize definitions of classifications and allegations

## **PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE**

### **Subject: One Year Report on the Citizen Complaint Process and In-Custody Death Review Panel**

October 8, 2009

Page 2

- Add objectivity and neutrality to the Citizen Complaint Process at all levels for members of the public and SJPDP employees
- User-friendly for the individual filing an allegation of police misconduct and the subject SJPDP employee
- Ensure equal treatment of all cases at intake and during pre-classification phase
- Ensure that limited investigative resources are assigned/reserved for more complex cases, while ensuring that all cases undergo a level of investigation
- Preservation of public confidence in the Citizen Complaint Process and SJPDP
- Avoid reaching conclusions and/or finalizing classification of the case before the facts of the case are known
- Removal of terms that prejudice or affect the investigation, how the case is handled, and/or reporting of IA Unit activities/performance.

For the reporting period (July 1, 2008 through June 31, 2009), implementation of the revised Process has focused on training staff and investigating cases. Additionally, implementation of the revised Process required the Office of the Independent Police Auditor (IPA) and Internal Affairs Unit (IA Unit) to work closely together to ensure uniformity in approach and application of the new Process. In the next year, the Police Department will focus on developing performance measures to evaluate the Process against the above goals and objectives, as resources permit; therefore, this evaluation largely focuses on process review and areas for additional refinement.

## **ANALYSIS**

This report provides an evaluation of the Process from two perspectives: Quantitative Findings (Statistics/Activity) and Qualitative Findings (Five Stages of the Complaint Process). A progress report is also provided on the new In-Custody Death Training Review Panel process.

A high-level summary of this evaluation includes:

- In CY 2008, the IPA agreed that the IA Unit's investigation was fair, thorough and complete in 83% of the cases audited, an increase from 78% in CY 2007.<sup>1</sup> The IA Unit and IPA anticipate that the level of agreement for July 1, 2008 through June 30, 2009 may be similar as CY 2008.
- In the past, the Administration has used the "# of complaints/Calls for Service" ratio as a performance indicator. Staff has decided to discontinue use of this benchmark because it overly connects the Citizen Complaint Process to Calls for Service, and omits police-initiated and community policing contacts.
- IA staff believes that the streamlined Classification categories were an improvement because they are more straightforward.
- Better communication between IA Unit and IPA during the investigation phase and more informal interaction between staff prior to the closing of a case.

---

<sup>1</sup> The level of agreement between the IA Unit and IPA with respect to how a case was investigated, and whether the findings were appropriate, provide insight into the investigative quality and performance.

## **PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE**

### **Subject: One Year Report on the Citizen Complaint Process and In-Custody Death Review Panel**

October 8, 2009

Page 3

- Inability to conduct year-to-year statistical analysis due to the phasing out of the prior Process and implementation of the revised Process during the period of evaluation.
- General agreement, based on discussion between the Administration and IPA, on areas that require refinement in the next year.
- As an outgrowth of this evaluation, the Police Department has developed a work plan that focuses on strengthening its Early Intervention System and Risk Management functions to help enhance police accountability and improve community relations.
- At the City Manager's request, an evaluation was conducted on the former Courtesy definition. A preliminary definition for the Courtesy allegation is provided, that focuses on conduct, language, and professionalism with respect to carrying out law enforcement duties. The preliminary definition is an affirmative obligation to Courtesy. The preliminary definition is as follows:

*Courtesy: Department members will be professional in the course of their duties. Profane or derogatory language or obscene gestures will not be used during a contact with a member of the public. The Department recognizes that there are limited field situations where profane or derogatory language or obscene gestures may be a reasonable tactic or tool (e.g., undercover work, imminent risk, volatile physical and deadly force encounters, control tactic, etc.).*

### ***Evaluation Approach***

The evaluation of the revised Process entailed a series of meetings that focused on a qualitative and quantitative review. Participants included: a Deputy City Manager and staff from the City Manager's Office; IA Unit Commander and IA Unit staff; Police Department's Research and Development Unit; IPA and IPA staff; and, for some meetings, the Chief of Police. The facilitator who assisted during the development of the revised Process, Dr. Shawn Spano, also participated in some meetings.

The series of meetings began by discussing a framework for which to approach review of the revised Process and, generally, it was as such:

- Review Goals and Objectives and determine if this is an appropriate evaluation approach (later discussions centered around the need to develop performance measures to conduct a performance evaluation);
- Discuss the revised Process by each stage and identify what is working and what additional areas need to be addressed, make immediate changes, revisions, and/or corrections if there is agreement between the Administration and IPA;
- Review the statistical information for the reporting period and begin to draw conclusions, where appropriate and identify areas where conclusions can not be developed; and,
- Discuss and edit the proposed report to the Public Safety, Finance & Strategic Support Committee.

It should be noted that the Administration has observed process improvements in the Process and that any additional refinements noted throughout this report are ideas that will further strengthen the Process. During the discussions, it was made clear that the observed improvements were

**PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE**

**Subject: One Year Report on the Citizen Complaint Process and In-Custody Death Review Panel**

October 8, 2009

Page 4

more likely the result of improved communication between the IPA and IA Unit, and it was difficult to attribute specifically which improvements result from the revised Process.

Additionally, during the evaluation process, the IPA raised concerns that the SJPD Duty Manual lacked alignment in certain sections with the State Penal Code, which were corrected during the time that the above process took place. During review of each stage of the Process, staff discussed areas where simple administrative processes could result in additional improvements, which were also implemented during the time that the above evaluation process took place.

### ***1. Quantitative Findings: Statistics/Activity***

This section of the report provides statistical information for the period July 1, 2008 through June 30, 2009 for complaint classification and allegations and findings.

#### ***Complaint Classification***

Cases are placed into one of three classifications: Conduct Complaints; Policy Complaints; and, Non Misconduct Concerns. The Pre-Classification category is a holding status for a case that awaits classification into the above three categories. For definitions of case classifications, allegations and findings, see Attachment A.

In this reporting period, the IA Unit received 462 cases. The data show that of these cases:

- 287 (62%) were classified as Conduct Complaints
- 5 (1%) were classified as Policy Complaints
- 157 (34%) as Non Misconduct Concerns
- 13 (3%) were placed in Pre-Classification

Also during this reporting period, the IA Unit investigated and closed 306 cases as follows:

- 149 were closed under the revised Process
- 157 were processed under the former Process.

Cases that were received under the former Process, that were investigated during this reporting period, were also closed under the former Process. The result is that the data are mixed for this reporting period. The reason for this overlap is that an investigation can take nine to 10 months to complete, which required a phase out of the former Process during implementation of the revised Process.

#### ***Allegations and Findings***

There are eight categories to characterize allegations of police misconduct:

- Arrest/Detention
- Biased Based Policing
- Courtesy
- Conduct Unbecoming a Police Officer

**PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE****Subject: One Year Report on the Citizen Complaint Process and In-Custody Death Review Panel**

October 8, 2009

Page 5

- Force
- Neglect of Duty
- Procedure
- Search/Seizure

There are seven findings used to close allegations upon completion of the investigation:

- Complaint Withdrawn
- No Finding
- Other
- Exonerated
- Not Sustained
- Sustained
- Unfounded

This evaluation focused on the 149 cases closed under the revised Process. Because it was necessary to phase out the former Process during the implementation of the revised Process, a year-to-year comparison is not available. Of the 149 closed cases, there were 412 allegations: Table 1 below provides a breakdown of the allegations and findings.

**Table 1: Allegations and Findings for Closed Conduct Complaints (July 1, 2008-June 30, 2009)**

<b>Allegations</b>	<b>Complaint Withdrawn</b>	<b>No Finding</b>	<b>Other Exonerated</b>	<b>Not Sustained</b>	<b>Sustained</b>	<b>Unfounded</b>	<b>Total</b>	<b>%</b>
Arrest/Detention	0	8	3	43	7	0	62	15%
Bias Based Policing	2	5	6	4	0	0	33	8%
Courtesy	7	13	1	10	18	1	54	13%
Conduct Unbecoming an Officer Allegation	0	1	2	3	0	1	11	3%
Force	6	5	4	11	3	0	35	8%
Neglect of Duty	0	1	6	3	1	0	11	3%
Procedure	14	29	8	64	13	1	150	36%
Search/Seizure	2	5	2	39	8	0	56	14%
<b>TOTAL</b>	<b>31</b>	<b>67</b>	<b>32</b>	<b>177</b>	<b>50</b>	<b>3</b>	<b>412</b>	<b>100%</b>
<b>(%)</b>	<b>7%</b>	<b>16%</b>	<b>7%</b>	<b>43%</b>	<b>12%</b>	<b>1%</b>		

Attachment B includes a detailed discussion of the revised Process with respect to allegations and findings. A summary of key findings is as follows:

- 23% of allegations are either Complaint Withdrawn or No Finding. Staff needs to better understand why such a high number of allegations fall into these two categories. This can be accomplished by contacting complainants and inquiring why an individual withdrew a complaint or by understanding trends within the No Finding category.
- 43% of allegations were exonerated. This means that the investigation determined that the police officer's act(s) were justified, lawful, and proper.
- 1% of allegations were sustained. This means that the investigation disclosed sufficient evidence to clearly prove the allegation made in the complaint. At first glance, this number appears low; however, there are some complex cases under investigation from this reporting period that require more time.
- The finding of "Other" was created to address cases received after one year from the date of incident. Additional review will be completed to better understand how the Police Department is using this finding and identify any improvements, if needed.

**PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE**

**Subject: One Year Report on the Citizen Complaint Process and In-Custody Death Review Panel**

October 8, 2009

Page 6

- The “Unfounded” finding will be amended to apply conditions when this finding can be issued for Bias Based Policing. Specifically, the definition of “Unfounded” will reflect that, for Bias Based Policing allegations only, the investigation and analysis revealed a reasonable, nondiscriminatory basis for the contact or officer action. Currently, “Unfounded” means that the investigation conclusively proved that the acts complained about did not occur. Because of proof problems in the analysis of Bias Based Policing, it is difficult to reach a “conclusively proved” threshold. However, if a reasonable, nondiscriminatory basis for the officer’s actions is established, then it is reasonable to state that the evidence was not sufficient to prove that the officer was motivated only by bias.
- Additional changes to the Unfounded finding will be informed by the Consortium for Police Leadership in Equity (CPLÉ) effort.

<b>2. Qualitative Findings: Five Stages of the Complaint Process</b>
--

An evaluation of the five stages of the revised Process is provided, along with the definition of each stage (See Attachment C for additional detail).

**Stage 1: Intake Process**— The complaint process starts with the filing of a complaint. An individual may file a complaint in person, over the phone, via email or fax at the IPA Office or the IA Unit. Key findings of the evaluation include:

- (1) Continue discussions about the pros and cons of audio recording each discussion with a potential/actual complainant.
- (2) Staff believes that the use of the form that explains the Process, developed by the IA Unit, with IPA input, has been informative for a potential/actual complainant.

**Stage 2: Classification**— The IA Unit is responsible for classifying all cases. The revised Process has three case classifications (e.g., Conduct Complaint, Policy Complaint, and Non-Misconduct Concern). Generally speaking, the case classification determines the level of investigation a case receives. Key findings of the evaluation include:

- (1) The IPA requested, and IA Unit agreed, to provide more detail/description regarding the Use of Force in preliminary case summaries. This will assist the IPA with an assessment of degree of force.
- (2) The IA Unit requested, and the IPA agreed, to place all cases in Pre-Classification status, noting that there were some cases classified as Non Misconduct Concern whereby the IA Unit removed from that classification and placed in Conduct Complaint.

**Stage 3: Investigation**— IA Unit staff examines the facts of the case, including reports, witness statements, and evidence to determine if the information collected/available supports the allegations against the subject officer(s). At the conclusion of every investigation, a finding is issued for each allegation. Key findings of the evaluation include:

**PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE**

**Subject: One Year Report on the Citizen Complaint Process and In-Custody Death Review Panel**

October 8, 2009

Page 7

- (1) The IA Unit and IPA agreed that an approach for handling of non-meritorious or duplicative concerns was needed. Preliminary review of best practices began and additional work will continue leading to an improved process.
- (2) A draft definition for Courtesy allegation is provided and will be further evaluated. The preliminary definition for the Courtesy allegation focuses on conduct, language, and professionalism with respect to carrying out law enforcement duties. The preliminary definition is an affirmative obligation to Courtesy. The preliminary definition is as follows:

***Courtesy:** Department members will be professional in the course of their duties. Profane or derogatory language or obscene gestures will not be used during a contact with a member of the public. The Department recognizes that there are limited field situations where profane or derogatory language or obscene gestures may be a reasonable tactic or tool (e.g., undercover work, imminent risk, volatile physical and deadly force encounters, control tactic, etc.).*

- (3) Short- and long-term changes for Bias Based Policing are discussed, with input needed from the CPLE effort.
- (4) Additional discussion is needed on allegation identification to better understand concerns of the IPA and IA Unit with respect to documentation in the investigation.

**Stage 4: Closing**— A complaint is considered closed once the IA investigation has been completed and findings have been issued. A copy of the closed investigation is then forwarded to the IPA for audit. Key findings of the evaluation include:

- (1) The Administration and IPA noted that there were delays in closing cases that resulted in less time to audit and/or appeal cases. There was agreement to work on lessening the time to close cases, so that the City Manager and IPA could have more time to perform their respective duties.

**Stage 5: Audit Process**— The IPA audits investigations to examine if they are complete, thorough, objective and fair. Key findings of the evaluation include:

- (1) IPA and IA Unit staff have observed that generally speaking, IPA investigation audits are being completed quicker. Once an investigation has been completed, ideally within 300 days, the IPA completes its audit within two weeks.

### ***3. In-Custody Death Training Review Panel***

The In-Custody Death Training Review Panel protocols were implemented in March 2008. The protocols summarize the actions that the SJPD will take following an in-custody death, and outline the roles of the City Attorney's Office, IPA, Santa Clara District Attorney's Office, and

**PUBLIC SAFETY, FINANCE & STRATEGIC SUPPORT COMMITTEE**

**Subject: One Year Report on the Citizen Complaint Process and In-Custody Death Review Panel**

October 8, 2009

Page 8

Coroner's Office.<sup>2</sup> To date, no Panel sessions have been convened; however, the Police Department anticipates holding its first session in the next few months to review one or two cases. The IPA recommends a six-month status check-in on all outstanding reviews for Officer-Involved Shootings and for In-Custody Death Training Review Panel to ensure that the panels are kept on track, which will be accomplished by informal discussions with the Chief of Police.

**CONCLUSION**

The first year of the new Process has been a success with respect to implementing the basic elements of the revised Process. IA Unit and IPA staff has done a commendable job at taking a complex process and implementing it, while phasing out the former Process. As noted already, staff will continue to refine the Process and address the issues noted in this report. As an outgrowth of this evaluation, the Police Department has developed a work plan that focuses on strengthening its Early Intervention System and Risk Management functions to help enhance police accountability and improve community relations.

**COORDINATION**

This report has been coordinated and edited by the San Jose Police Department and offices of the City Attorney and Independent Police Auditor.

  
DEBRA FIGONE  
City Manager

*For additional information on this report, contact Deanna J. Santana, Deputy City Manager at 535-8280.*

**Attachments:**

- A: Definitions of Case Classifications, Allegations and Findings
- B: Quantitative Findings (Statistics/Activity)
- C: Qualitative Findings (Five Stages of the Complaint Process)

---

<sup>2</sup> These guidelines were developed in consultation with the offices of the City Attorney, Santa Clara County District Attorney, and Employee Relations.